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July 20, 2020

VIA ECF

The Honorable Ronnie Abrams, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Courtroom 1506
New York, NY 10007

Re: *Mendez v. Burger King Corporation*, No. 19 Civ. 09855 (RA)

On July 6, 2020, the Court issued an order directing Plaintiff Himelda Mendez ("Plaintiff" or "Mendez") and Defendant Burger King Corporation ("Defendant" or "BKC") (collectively "the Parties") to review the Court's rulings in *Tucker v. Whole Foods Market Group, Inc.*, No. 19 Civ. 9842 (RA), 2020 WL 3504728 (S.D.N.Y. June 29, 2020) and *Thorne v. Boston Market Corporation*, No. 19 Civ. 9932 (RA), 2020 WL 3504178 (S.D.N.Y. June 29, 2020). The Court has ordered the Parties to submit a joint letter addressing how these two decisions might affect the case, and proposing next steps. Dkt. 28. Having reviewed the decisions, Plaintiff and Defendant hereby submit their respective positions:

Plaintiff's Position: We write pursuant to the Court's Order, dated July 6, 2020, (Dkt. No. 28), in which the Court sought the parties' views concerning the effect of the Court's recent rulings in *Tucker v. Whole Foods Market Group, Inc.*, No. 19-CV9842 (RA) (S.D.N.Y. June 29, 2020), and *Thorne v. Boston Market Corp.*, No. 19-CV-9932 (RA) (S.D.N.Y. June 29, 2020) on this case. While each case stands in its own merits, Your Honors' decisions may affect the outcome of Burger King's pending motion to dismiss in this action. Further, the outcome of the motion may be affected by the resolution of the appeals of decisions granting similar motions to dismiss that are currently pending before the Second Circuit in the consolidated appeal *Mendez v. AnnTaylor, Inc.*, No. 20-1550 (the "Consolidated Appeal").

Accordingly, Plaintiff requests, like in many similar cases before Your Honor, this Court to stay this matter pending the outcome of the Consolidated Appeal.

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Defendant's Position:

This case should be dismissed for the same reasons this Court dismissed the *Whole Foods* and *Boston Market* cases because the allegations are identical. Each of these cases presents claims under the Americans with Disabilities Act ("ADA"), New York State Human Rights Law, and New York City Human Rights Law, premised on defendants' failure to offer gift cards embossed in Braille. Compare *Whole Foods*, 2020 WL 3504728, at *2; *Boston Market*, 2020 WL 3504178, at *2, to Dkt. 13 at ¶¶ 68–106. The Court's dismissals of the same claims were based on standing (*Whole Foods*, 2020 WL 3504728, at *3–5) and failure to state a claim (*Boston Market*, 2020 WL 3504178, at *6–12). The same basis for the dismissals in *Whole Foods* and *Boston Market* apply equally here, and BKC respectfully requests that the Court grant BKC's Motion to Dismiss Plaintiff's First Amended Complaint on the same grounds.

* * *

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/ Michael A. Keough

Michael A. Keough

cc: Counsel of Record (via ECF notification)

This action is hereby stayed. No later than one week after the Second Circuit issues its decision in the consolidated appeal captioned *Mendez v. Ann Taylor, Inc.*, No. 20-1550, the parties shall file a joint letter informing the Court of their position on how the Second Circuit's decision impacts this particular case and proposing next steps in this action.

SO ORDERED.

A handwritten signature in blue ink, appearing to be "RA", written over a horizontal line.

Hon. Ronnie Abrams

7/21/2020